

DEPOSITION OF:  
ELMER BORCHARDT (5-12-03) CONDENSED

IN THE CIRCUIT COURT OF MILWAUKEE COUNTY

STATE OF WISCONSIN

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MARJORIE A. TAKAVITZ,  
individually and as special  
administrator of the Estate  
of WILLIAM A. TAKAVITZ,

Plaintiffs,

CASE NO. 02-CV-002551

-vs-

SPRINKMANN SONS, INC.,  
a corporation, et al.,

 **COPY**

Defendants.

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Deposition of ELMER H. BORCHARDT, called for  
examination by and on behalf of the Plaintiffs, under and  
pursuant to the provisions of Chapter 804 of the Wisconsin  
Statutes, and the acts amendatory thereof and supplementary  
thereto, pursuant to Notice of Deposition, taken at the Law  
Offices of Terschan, Steinle & Ness, 2600 North Mayfair  
Road, Suite 700, Milwaukee, Milwaukee County, Wisconsin, on  
the 12th day of May, 2003, commencing at 10:10 a.m. to  
10:45 a.m. in the forenoon. Reported by Melody D. West,  
Notary Public, Court Reporter.

\* \* \* \*

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A-P-P-E-A-R-A-N-C-E-S

CASCINO VAUGHAN LAW OFFICES, LTD., by GEORGE H. SENTENEY, ESQ., 220 South Ashland, Chicago, Illinois, 60607, appeared on behalf of the Plaintiffs.

CRIVELLO, CARLSON & MENTKOWSKI, S.C., by TRAVIS J. RHOADES, ESQ., 710 North Plankinton Avenue, Suite 500, Milwaukee, Wisconsin, 53203, appeared on behalf of the Defendant, SPRINKMANN SONS, INC. and on behalf of TOWER AUTOMOTIVE PRODUCTS COMPANY.

TERSCHAN, STEINLE & NESS, by FRANK R. TERSCHAN, ESQ., 2600 North Mayfair Road, Suite 700, Milwaukee, Wisconsin, 53226-1314, appeared on behalf of the Defendant L & S INSULATION.

HINSHAW & CULBERTSON, by MELLISSA A. SCHAFER, ESQ., 100 East Wisconsin Avenue, Suite 2600, Milwaukee, Wisconsin, 53202-4115, appeared on behalf of the Defendant OAKFABCO.

SCHIFF, HARDIN & WAITE, by MATTHEW C. JARDINE, ESQ., 6600 Sears Tower, Chicago, Illinois, 60606, appeared on behalf of the Defendant OWENS-ILLINOIS.

\* \* \* \*

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\* \* \* \*

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TRANSCRIPT OF PROCEEDINGS  
ELMER H. BORCHARDT, called for examination by and on behalf of the Plaintiffs, being first duly sworn, was examined and testified as follows:  
(Deposition Exhibit Nos. 1 through 5 were marked for identification by the Court Reporter.)

## EXAMINATION

BY MR. SENTENEY:

- 10 Q. Would you state your full name, sir?  
11 A. Elmer H. Borchardt.  
12 Q. And your current address -- your professional  
13 address is what? Professional business address  
14 is what?  
15 A. 616 South 89th Street, Milwaukee, 53214.  
16 Q. Are you currently employed, sir?  
17 A. By L & S.  
18 Q. In what capacity are you employed by them?  
19 A. I'm the president.  
20 Q. You've been employed by them for approximately  
21 53 years now; is that correct?  
22 A. Correct.  
23 Q. You've been deposed before, sir?  
24 A. Many times.  
25 Q. What's your best estimate of the number of

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E-X-H-I-B-I-T-S

BORCHARDT DEPOSITION:	PAGE MARKED:
No. 1 - Contract Ledger Book from L & S Corporation dealing with contracts.....	4 (23)
No. 1-A Actual ledger book.....	40
No. 2 - Contract Ledger Book from L & S Corporation dealing with contracts.....	4 (24)
No. 2-A Actual ledger book.....	40
No. 3 - Contract Ledger Book from L & S Corporation dealing with contracts.....	4 (24)
No. 3-A Actual ledger book.....	40
No. 4 - Contract Ledger Book from L & S Corporation dealing with contracts.....	4 (24)
No. 4-A Actual ledger book.....	40
No. 5 - Summary of L & S contracts at A. O. Smith Corporation.....	4 (7)

(The above marked Exhibits 1 through 4 were retained by Attorney George Senteney. Exhibit No. 5 was attached to the back of the original transcript. Exhibit Nos. 1-A, 2-A, 3-A and 4-A were retained by Attorney Frank Terschman.)

\* \* \* \*

(The original transcript was filed with Attorney George H. Senteney.)

\* \* \* \*

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- 1 times?  
2 A. Fifteen.  
3 Q. Okay. Would all of those be in some way or  
4 another in your capacity as president of L & S  
5 Corporation?  
6 A. Not all as president, but probably more familiar  
7 with the workings in the field than anyone else  
8 in the company at that time.  
9 Q. Okay. What percentage of those depositions have  
10 you been involved in would be related to  
11 asbestos litigation of any type?  
12 A. I don't know.  
13 Q. Okay.  
14 A. I don't have the faintest idea. They just ask a  
15 lot of questions in relation to people, and I  
16 gave them the answers and was truthful.  
17 Q. So you don't know what percentage is related to  
18 asbestos litigation?  
19 A. Well, I presume there's some related to that;  
20 but I wouldn't have the -- I'm not going to  
21 guess at it.  
22 Q. You brought four books today; correct? And  
23 they're the contract ledger books of L & S  
24 Corporation?  
25 A. Yes.

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- 1 Q. And we'll get into those in more detail later;  
2 but those books, essentially, represent the --  
3 as I understand it, numerical sequence, the  
4 contracts that L & S entered into from at least  
5 in 1947 until the 1970s; is that correct?  
6 A. That's correct.  
7 Q. And then we've marked as Deposition Exhibits 1  
8 through 4 today copies of those books; correct?  
9 A. If you say so. I'll accept that.  
10 Q. Well, sometime I would like you to take a chance  
11 to review those and see whether you agree that  
12 Exhibits 1 through 4 -- Your counsel will  
13 stipulate that they are copies -- reasonable  
14 copies of the ledger books brought.  
15 MR. TERSCHAN: Yeah, I don't think it  
16 makes a lot of sense for Mr. Borchardt to go  
17 through a page at a time and make sure they're  
18 accurate copies. I think we can work out, if  
19 you have someone who says that they made the  
20 copies or if we had Kinko make it or someone, we  
21 can make out that they're reasonable copies.  
22 MR. SENTENEY: Okay.  
23 MR. TERSCHAN: Or accurate copies.  
24 THE WITNESS: Well, the handwriting  
25 would correspond. That handwriting and the copy

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- 1 Q. Anything other than Exhibit 5 did you review?  
2 A. No. I'm sorry. I'm shaking my head. No.  
3 Q. Other than your counsel, did you talk to anyone  
4 in preparation for today?  
5 A. No.  
6 Q. What's your educational level, sir?  
7 A. High school, touch of college, Air Force, cadet  
8 training, little bit back in school after that  
9 and then into the trades.  
10 Q. Okay. And by "the trades," you mean starting  
11 with L & S in about 1950?  
12 A. Yes.  
13 Q. What did you do -- Any work other than your  
14 military career before you started at L & S?  
15 A. I worked in several different bits of employment  
16 in Milwaukee.  
17 Q. Okay. Just examples, like what, sir?  
18 A. Breweries.  
19 Q. Okay.  
20 A. Work that was readily available.  
21 Q. Is this like the general labor type of work or  
22 what?  
23 A. Yeah, you had to join the union.  
24 Q. Okay.  
25 A. Anything that's done in the brewery.

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- 1 should be the same. It was all done by one  
2 individual.  
3 MR. SENTENEY: Okay. We will go into  
4 that later then, sir.  
5 Q. Other than the four books, have you brought  
6 anything else with you today?  
7 A. No, sir.  
8 Q. Did you review anything prior to today's  
9 deposition?  
10 A. Yes.  
11 Q. What did you review?  
12 A. I was furnished a summary of all of this.  
13 Q. And would that summary be Exhibit 5?  
14 MR. TERSCHAN: Was that the same  
15 summary, just for the record, on April 8th that  
16 you sent a summary? I don't know if it's the  
17 same one or not.  
18 MR. SENTENEY: It should be the same  
19 one. Maybe it's different printing, but the  
20 information is the same.  
21 MR. TERSCHAN: Yeah.  
22 THE WITNESS: Yes.  
23 MR. TERSCHAN: Then that's the one he  
24 reviewed.  
25 MR. SENTENEY:

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- 1 Q. All right. In your education, professional  
2 career, have you gained what you consider to be  
3 any specialized knowledge in the area of what's  
4 called industrial hygiene?  
5 A. No.  
6 Q. How about any specialized knowledge or training  
7 in the area of product safety?  
8 A. Only what we picked up as we went through the  
9 years.  
10 Q. Do you claim to have any specialized knowledge  
11 as far as the hazards associated with asbestos,  
12 sir?  
13 A. Only from the time -- from the time factor that  
14 occurred after Dr. Selikoff's initial articles  
15 and then when it became more public knowledge,  
16 that's when I became more aware of it.  
17 Q. So would it be fair to say that your knowledge  
18 came from newspaper articles or just some  
19 journal references you've read?  
20 A. Well, that was a composite report by --  
21 authorized by the union, so that's how we  
22 eventually found out about it.  
23 Q. And you found out about Dr. Selikoff's article  
24 in the early '70s; is that correct?  
25 A. I think it was earlier than that.

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- 1 **Q. What is your best estimate of when that would**  
2 **have been?**  
3 **A. I think one of your interrogatories said it was**  
4 **1964.**  
5 **Q. So you would at least have had knowledge as far**  
6 **as the hazards of asbestos as early as 1964; is**  
7 **that your best estimate?**  
8 **A. I don't know that I had knowledge of the hazards**  
9 **at that time. I was aware of the report.**  
10 **Q. Okay. And what is your understanding what the**  
11 **report said?**  
12 **A. That -- I thought they targeted more toward**  
13 **powerhouse work, where it was used probably 95**  
14 **or 100 percent products that contained asbestos.**  
15 **That was not applicable to our company, because**  
16 **we used mostly fiberglass.**  
17 **Q. My question, again, sir: What was your**  
18 **understanding as far as the hazard that that**  
19 **article talked about related to asbestos? What**  
20 **did it indicate that people could potentially**  
21 **get as far as the conditions or diseases?**  
22 **A. If they were exposed to asbestos and smoke, they**  
23 **were high risk.**  
24 **Q. High risk for what, sir?**  
25 **A. Cancer.**

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- 1 **Q. And you were aware, were you not, by the late**  
2 **'50s or early '60s, at least from co-workers,**  
3 **were you aware that people died from asbestos?**  
4 **A. Not in our company.**  
5 **Q. I didn't ask you that. Were you aware in**  
6 **talking to people, that people by the late '50s**  
7 **or early '60s had died from asbestos exposure?**  
8 **A. It was occasionally mentioned.**  
9 **Q. When you started with L & S, there was both a**  
10 **Roofing Division and an Insulation Division;**  
11 **correct?**  
12 **A. Correct.**  
13 **Q. You started off as an estimator in the Roofing**  
14 **Division or trained to be an estimator in the**  
15 **Roofing Division?**  
16 **A. Yes.**  
17 **Q. You did that approximately five to seven years;**  
18 **correct?**  
19 **A. Yeah, three, four solid, and then an intermix**  
20 **of -- I started helping out with the pipe**  
21 **covering portion of our firm; and then I would**  
22 **do both for a period of time until such a time**  
23 **that we stopped doing roofing, and I then became**  
24 **full time out in the field for insulation.**  
25 **Q. When you say "pipe covering," that's referring**

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- 1 to the Insulation Division; correct?  
2 **A. Yeah, plumbing, heating or ventilating.**  
3 **Q. You liquidated the roofing part of the company**  
4 **in about the early 1960s; is that right?**  
5 **A. That sounds about right.**  
6 **Q. Now, you did -- L & S has historically been**  
7 **commercially -- Strike that.**  
8 **Typically their products or customers**  
9 **have been in the commercial and industrial**  
10 **sector; is that correct?**  
11 **A. That is correct.**  
12 **Q. So your insulation work would be commercial**  
13 **insulation and industrial insulation for**  
14 **factories and hospitals, schools, et cetera,**  
15 **breweries; right?**  
16 **A. Yes.**  
17 **Q. You would use -- Strike that.**  
18 **The insulation you would use would also**  
19 **include for high temperature steam lines;**  
20 **correct, or high temperature lines?**  
21 **A. Yes.**  
22 **Q. Okay. And from the time you started with L & S**  
23 **in the early '50s to the 1970's or so, it would**  
24 **be in the steam lines or high temperature lines**  
25 **that you used asbestos insulation; correct?**

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- 1 **A. No, that's not 100 percent correct. We**  
2 **started -- Because of the products that were**  
3 **available in the early '50s, that was all that**  
4 **was available. And when Fiberglass started**  
5 **promoting their products, we were one of the**  
6 **first companies to switch over to fiberglass**  
7 **because of a cost factor.**  
8 **So anywhere from 1953 or '4 -- I don't**  
9 **remember the exact date, into the '70s, we were**  
10 **heavy in glass.**  
11 **Q. You also used asbestos; correct?**  
12 **A. When we were required to, yes.**  
13 **Q. Okay. And when you used asbestos, it would be**  
14 **for steam pipes and related boiler work;**  
15 **correct?**  
16 **A. No.**  
17 **Q. Where else would you use asbestos then, sir?**  
18 **A. Prechanged, high temperature tanks, generator**  
19 **exhausts; those types of things.**  
20 **Q. And steam pipes?**  
21 **A. Could be, but we had by that time switched**  
22 **primarily to fiberglass.**  
23 **Q. Okay. By the 1970s, L & S was up to maybe about**  
24 **60 or so employees; would that be a fair**  
25 **statement?**

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- 1 A. That's probably correct.  
2 **Q. How many employees are there today, sir?**  
3 A. Today?  
4 **Q. Today.**  
5 A. 40ish.  
6 **Q. What do you -- Do you still do insulation work**  
7 **today?**  
8 A. Oh, yes. That's all we do.  
9 **Q. What kind of insulation work do you do today?**  
10 A. We insulate systems for plumbing, heating and  
11 ventilating.  
12 **Q. Your -- Strike that.**  
13 **Do you still own about 89 percent of**  
14 **the shares of stock in L & S Corporation?**  
15 A. No.  
16 **Q. How many -- What percentage do you own today,**  
17 **sir?**  
18 A. I don't know the exact count. I've been giving  
19 the stock away to the children.  
20 **Q. You still own stock in the company, though;**  
21 **correct?**  
22 A. Yes.  
23 **Q. You were up to about 89 percent a few years ago;**  
24 **correct?**  
25 A. No. My wife died five years ago. We have been

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- 1 A. Building Service Industrial Sales.  
2 **Q. And they were your primary distributor that you**  
3 **would buy the products from over the years?**  
4 A. To this date.  
5 **Q. For how long have you had that business**  
6 **arrangement with them?**  
7 A. Since the early '50s.  
8 **Q. So basically, you had an account with them; and**  
9 **so if you ever needed a product, you would call**  
10 **them and say, "Building Services, we need brand**  
11 **X, or we need X amount of pipe covering." Is**  
12 **that basically how it works?**  
13 A. Yes, truckload, carload quantities.  
14 **Q. And if you needed asbestos, they would be who**  
15 **you would contact?**  
16 A. For the limited amount we purchased, yes.  
17 **Q. You're familiar with a brand Kaylo; correct?**  
18 A. Yes.  
19 **Q. You've used it for high temperature insulations;**  
20 **correct?**  
21 A. I've used it, yes, that's correct.  
22 **Q. And you, yourself, have indicated you've seen**  
23 **the brand name on the product Kaylo for**  
24 **insulation you've used; correct, at L & S?**  
25 A. Yes.

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- 1 giving stock away for probably ten years prior  
2 to that. So now I'm limited to giving away  
3 stock from one person.  
4 **Q. Would you -- If I indicated to you that you**  
5 **testified at a deposition in 1996 that you owned**  
6 **about 89 percent of the stock, would you**  
7 **disagree with that?**  
8 A. I probably didn't take into consideration that  
9 we were -- had been giving it away. That might  
10 be reasonably correct, but I -- My accountant  
11 would have to go back through the books for  
12 that.  
13 **Q. And you became a part owner in 1957; correct?**  
14 A. Yes.  
15 **Q. Over the years, who has been the primary**  
16 **supplier for L & S?**  
17 MR. TERSCHAN: Supplier of what?  
18 MR. SENTENEY:  
19 **Q. Supplier of products, like asbestos or**  
20 **fiberglass or whatever.**  
21 A. Fiberglass was Owens-Corning.  
22 **Q. Okay. Would you buy directly from Owens-Corning**  
23 **or through an intermediary supplier?**  
24 A. A distributor.  
25 **Q. Who would that distributor be?**

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- 1 **Q. Okay. And you've used it -- L & S used Kaylo**  
2 **before 1959; correct?**  
3 A. Yes.  
4 **Q. And if I would represent to you that**  
5 **Owens-Illinois has indicated in answers to**  
6 **interrogatories that they began to manufacture**  
7 **commercial quantities of Kaylo asbestos**  
8 **containing products in about 1948 and until**  
9 **April 30th, 1958, they made Kaylo -- that, in**  
10 **quote, this defendant sold its Kaylo Containing**  
11 **Manufacturing Division to Owens-Corning**  
12 **Fiberglass Corporation in 1958, if I represent**  
13 **to you that that is on record from**  
14 **Owens-Illinois prior to 1958, would L & S have**  
15 **used Kaylo?**  
16 A. Prior to '58?  
17 **Q. Yes.**  
18 A. I would imagine that we purchased some.  
19 **Q. Okay.**  
20 A. If Building Service handled it, that was our  
21 source.  
22 **Q. And so if you purchased Kaylo, one of the**  
23 **applications for the Kaylo you would purchase**  
24 **would be for steam pipe insulation; correct?**  
25 A. Possibly.



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- 1 Q. Would that be one of the applications?  
2 A. One, yes.  
3 Q. When you first learned of the hazards of  
4 asbestos, or at least the possibility that  
5 people could get cancer from asbestos exposure,  
6 did L & S do anything to ever -- for the  
7 customers who may come into contact with the  
8 asbestos that you sold or installed, do anything  
9 to minimize, reduce the risk to those workers?  
10 A. You want to repeat that?  
11 Q. Yes. You've indicated that at least by 1964, or  
12 if not by the late 1950s, you were aware at  
13 least that people had died from asbestos  
14 exposure; the hazard at least you indicated was  
15 getting cancer.  
16 With that background, I'm asking you,  
17 sir: At any time did L & S do anything to warn  
18 or advise potential workers who came into  
19 contact with asbestos that L & S sold or  
20 installed about the hazards of asbestos or take  
21 any steps to minimize or reduce the hazard of  
22 asbestos to the workers that came into contact  
23 with the product?  
24 A. We weren't that aware of those hazards until  
25 much later.

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- 1 Q. Okay.  
2 A. And our switching to fiberglass was more based  
3 on cost factor, having to be a beneficial one;  
4 but we switched products in favor of fiberglass  
5 for the majority of our work in the late '50s  
6 and '60s.  
7 Q. Okay. Then again, sir, what steps did you take,  
8 in the face of the hazard you testified to  
9 you're aware of, to minimize or reduce the risk  
10 to workers?  
11 A. If I testified that I was aware of those hazards  
12 that early, that I don't know. I don't know --  
13 We didn't do anything extraordinary until after  
14 Selikoff's articles became very public.  
15 Q. Okay. And that would then have been when, sir?  
16 A. Oh, probably the late '60s.  
17 Q. What did you do then when the Selikoff article  
18 became public?  
19 A. We warned our employees, suggested that they  
20 didn't smoke, because that was the gist of the  
21 whole article.  
22 Q. Was that only to your employees you suggested  
23 they didn't smoke?  
24 A. Well, they are the only ones we were in contact  
25 with.

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- 1 Q. Did you do anything to the customers who were  
2 buying your product where you were installing  
3 the product, warn them of the hazards or make  
4 any recommendations or suggestions?  
5 A. We made recommendations that they switch to  
6 fiberglass because of cost. And later, because  
7 of the -- If they insisted that we use a product  
8 that had contained asbestos and they specked it,  
9 we were obligated to use it.  
10 Q. And anything else, sir?  
11 A. I don't know what you mean by "anything else."  
12 Q. Anything else that you ever did to advise  
13 customers and their employees who may come into  
14 contact with the hazards of asbestos as far as  
15 recommendations and steps to minimize and reduce  
16 the hazards?  
17 A. We were not in a position to do that. We were  
18 told what to do. The specifications were  
19 written by someone other than ourselves just for  
20 any job.  
21 Q. I understand. The question, sir: Can I take it  
22 that you did nothing else -- L & S did nothing  
23 else?  
24 A. Other than what I stated.  
25 Q. L & S is a member of the Wisconsin Insulation

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- 1 Contractors' Association; correct?  
2 A. Yes.  
3 Q. When was it formed, sir?  
4 A. It's probably in the deposition somewhere, and I  
5 would certainly agree that whatever I previously  
6 said is the start date of that.  
7 Q. What's your best estimate, sir? I'm not holding  
8 you to a particular, specific year; but a best  
9 estimate as to an approximate time.  
10 A. Oh, I think they formed somewhere in the --  
11 Well, they formed prior to our joining. We were  
12 one of the last holdouts. Let's say the '60s.  
13 Q. Okay.  
14 A. Early '60s.  
15 Q. And when you joined, how many members were  
16 there?  
17 A. Three, four maybe.  
18 Q. Okay. And it included Sprinkmann Sons and L & S  
19 and who else?  
20 A. It was Industrial. I think they were a member.  
21 McDermott out of Rockford was a member.  
22 Q. Is this association still active today?  
23 A. With three members, yes.  
24 Q. Okay. When you joined, what was the purpose of  
25 this association, as you understood it?

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1 A. Just a group of contractors that would discuss  
2 mutual problems and work for the benefit of the  
3 trade.  
4 **Q. And would these contractors all be insulators in**  
5 **the sense that L & S was an insulator and as you**  
6 **just described earlier today?**  
7 A. Yes.  
8 **Q. So these would be companies that all do at least**  
9 **on -- and part of the business would be**  
10 **commercial insulation for things, including**  
11 **steam pipes; correct?**  
12 A. Yes.  
13 **Q. Now, when you started with L & S in 1950, was**  
14 **A. O. Smith a customer of L & S?**  
15 A. Yes.  
16 **Q. Okay. When was your first contact in any nature**  
17 **with A. O. Smith?**  
18 A. Well, I was aware that the company was doing  
19 miscellaneous work there prior to my eventually  
20 going out to the site with Mr. Underberg.  
21 Mr. Underberg handled most of their requests.  
22 It was just a habit. They wanted the same  
23 person, and he would always go out and measure  
24 and quote them; and if we were low bidder, we  
25 would be successful in doing it.

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1 "A. O. Smith Building steam pipe insulation";  
2 correct?  
3 A. It says Building 5 and -- 5 and 6, steam pipe  
4 insulation, correct.  
5 **Q. Correct.**  
6 A. This one doesn't give the year. Is that on that  
7 list?  
8 **Q. If you look, sir, at the beginning it shows it's**  
9 **1947.**  
10 A. Well, I was not employed by them then.  
11 **Q. I understand.**  
12 MR. SENTENEY: Let's go off the record  
13 for a second.  
14 (Discussion off the record.)  
15 MR. SENTENEY:  
16 **Q. Sir, if I direct your attention to just going**  
17 **back a little bit to 2550, contract number, you**  
18 **will see at the top of that page, there's a 1947**  
19 **date; correct?**  
20 A. Yes, that's right.  
21 **Q. Okay. So you wouldn't have any specific**  
22 **knowledge of that contract because you hadn't**  
23 **started with the company then; is that correct?**  
24 A. Yes.  
25 **Q. Let's just, you know, backtrack for the record.**

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1 **Q. Did you ever become more involved in that as far**  
2 **as -- Strike that.**  
3 **Mr. Underberg, how long was he**  
4 **responsible for the A. O. Smith job?**  
5 A. Until he retired.  
6 **Q. When was that, approximately?**  
7 A. That would be a pure guess.  
8 **Q. Who replaced him?**  
9 A. No one.  
10 **Q. Did you ever do anything as far as the actual**  
11 **direct work with A. O. Smith as far as**  
12 **contracting?**  
13 A. I was one of the people that might have gone  
14 there and measured work.  
15 **Q. And that work would include steam line, pipe**  
16 **covering insulation?**  
17 A. And plumbing and ventilating and everything that  
18 they requested bids on.  
19 **Q. And it would be high temperature lines related**  
20 **to boilers and such, too?**  
21 A. Could be.  
22 **Q. Now, sir, I'm going to show you what we**  
23 **previously marked as Exhibit 1; and I'm going to**  
24 **show you, as far as a reference, on Contract**  
25 **No. 2588, which has been highlighted. It says,**

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1 Exhibits 1 through 4, we've talked before, these  
2 are copies of the ledgers that you brought here  
3 today?  
4 A. Yes.  
5 **Q. Okay. And with that, the ledgers you brought**  
6 **here today were business records of L & S;**  
7 **correct?**  
8 A. Contract recording dates.  
9 **Q. But they are generally business records that**  
10 **L & S kept; correct?**  
11 A. Yes.  
12 **Q. And they were kept in the ordinary course of**  
13 **your business; correct, and documents prepared**  
14 **by L & S; correct?**  
15 A. All of them are there.  
16 **Q. But I'm correct, my statement?**  
17 A. Yes.  
18 **Q. Let's then look to Contract No. 4120, sir. This**  
19 **is Page 234, Counsel.**  
20 MR. TERSCHAN: Thanks.  
21 MR. SENTENEY:  
22 **Q. 1420, can you read that entry, sir?**  
23 A. "A. O. Smith Corporation, Building No. 11, steam  
24 pipe covering."  
25 **Q. Okay.**

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1 A. 1952.  
2 **Q. You were working with L & S by that time;**  
3 **correct, sir?**  
4 A. Yes.  
5 **Q. Making a reference to steam pipe, that would**  
6 **have been a high temperature line?**  
7 A. Not necessarily. I think when it was high  
8 temperature, they indicated it.  
9 **Q. Steam is not high temperature?**  
10 A. Steam could be low temperature, medium pressure  
11 and high temperature.  
12 **Q. You don't believe that generally in cases, steam**  
13 **is indicated to be a high temperature?**  
14 A. Most -- Most companies didn't have that much  
15 high pressure steam. They generated high  
16 pressure steam in order to reduce the pressure  
17 to low temperature steam, which was more  
18 economical to do.  
19 **Q. Sir, I'm going to direct your attention, I'm**  
20 **going to show you from your -- the Berkahn,**  
21 **B-e-r-k-h-a-h-n, deposition, taken on**  
22 **January 16, 1998, I'm going to show you --**  
23 A. This is --  
24 **Q. -- Page 45, sir. Excuse me for coming across so**  
25 **I can look over your shoulder, so I can**

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1 grant me, it was asbestos insulation that you  
2 used?  
3 A. It could have been.  
4 **Q. Were you using fiberglass at that time in 1952?**  
5 A. No.  
6 **Q. So it was likely it was asbestos; correct?**  
7 A. Probably.  
8 **Q. Okay. And it was probably then like Kaylo,**  
9 **would that also be a fair statement?**  
10 A. Not necessarily.  
11 **Q. Would it possibly have been Kaylo?**  
12 A. Some of it might have been.  
13 **Q. That was the typical product you bought from**  
14 **Building Services prior to 1958; correct?**  
15 A. We also bought asbestos-containing products from  
16 other companies.  
17 **Q. But I'm correct, that's a product that you used**  
18 **during that time for insulation for steam lines?**  
19 A. It was one of the products used.  
20 **Q. And that would be true for a contract example**  
21 **5910 and 5918; correct?**  
22 A. Where are you?  
23 **Q. Just for example, 5910.**  
24 A. Have you got that? Okay.  
25 **Q. Would you read that, sir?**

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1 accurately read it to you.  
2 A. Page 45, yeah.  
3 **Q. In that deposition, sir, there's a reference to**  
4 **a contract number, and it says, quote, "Steam**  
5 **pipe insulation"; correct? Do you see that**  
6 **question there?**  
7 A. Yes.  
8 **Q. Then there's a question on page -- I'm sorry, on**  
9 **Line 17, quote, "What does that mean when it**  
10 **says steam pipe insulation?" The answer, quote,**  
11 **"That means they insulated some high temperature**  
12 **steam lines, which was very common at A. O.**  
13 **Smith," unquote.**  
14 **Did I read that correctly?**  
15 A. Some. Some.  
16 **Q. Okay.**  
17 A. Some being maybe 10 percent of all the steam  
18 lines.  
19 **Q. And you said that was very common at A. O.**  
20 **Smith; correct?**  
21 A. Steam lines were, not high pressure.  
22 **Q. Did I read that accurately, sir?**  
23 A. Yes, you did. Some. Yes, I agree with that.  
24 **Q. When it was high temperature, was it possible**  
25 **that they were -- at least possible, would you**

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1 A. "1957, A. O. Smith, Building 113, steam pipe  
2 insulation."  
3 **Q. Then 5918, which is the next page.**  
4 A. "A. O. Smith, Building 1 of forced steam pipe  
5 insulation."  
6 **Q. Were you using fiberglass by that time, sir?**  
7 A. Yes, we could have at that time with the owner's  
8 permission.  
9 **Q. With the owner's permission?**  
10 A. Yes.  
11 **Q. So you had to specifically get permission to use**  
12 **fiberglass?**  
13 A. If they specified the product, in order for us  
14 to change it, we had to get the owner's  
15 permission to get that.  
16 **Q. So do you know what product would have been**  
17 **specified during that time for that contract?**  
18 A. Not specifically, no.  
19 **Q. If not specified, what would have been the**  
20 **standard course of procedure to use?**  
21 MR. TERSCHAN: For L & S?  
22 MR. SENTENEY:  
23 **Q. For L & S.**  
24 A. We purchased quite a bit of material from  
25 Triple A out of Chicago.



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- 1 **Q. And that was what?**  
 2 A. It was magnesia-type. Not cal-sil, but they  
 3 called it magnesia.  
 4 **Q. Did it contain an asbestos product?**  
 5 A. It contained some asbestos product.  
 6 **Q. Were you also using Kaylo at that time frame?**  
 7 A. Could have.  
 8 **Q. Okay. Now I'm not going to belabor going**  
 9 **through all the different contracts; but as you**  
 10 **reviewed the books today, you will agree that**  
 11 **there are steam pipe references, at least as**  
 12 **exemplified in Exhibit 5 and as set forth in**  
 13 **Exhibits 1 through 4 from it, 1947 into at least**  
 14 **1970, 1971, through contracts 9078; correct?**  
 15 A. Yes, I -- But please note that in '71, there was  
 16 no more asbestos made.  
 17 **Q. Okay.**  
 18 A. So anything after '71, it had to be fiberglass  
 19 or a non-asbestos product.  
 20 **Q. You were using asbestos up to 1970 or '71 then**  
 21 **at least; correct?**  
 22 A. If it was required, yes.  
 23 **Q. Now on Exhibit 5, sir, there are references, you**  
 24 **know, like are taken from Exhibits 1 through 4.**  
 25 **For example, you will see relative -- In the**

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- 1 1949 ledger, I'm just going to show you,  
 2 Contract 3262, where there's a contractor named  
 3 Standard Distributing Corporation.  
 4 A. Yes.  
 5 **Q. Okay.**  
 6 A. 3262.  
 7 **Q. Just for example, when it makes reference to**  
 8 **"contractors," how would that come about? Is**  
 9 **that, you know, an intermediary; or was that**  
 10 **someone who contacted you, or were they actually**  
 11 **doing the contract work for A. O. Smith, sir, or**  
 12 **what?**  
 13 A. They were doing the contract work. If there's a  
 14 contractor mentioned, then we did the work for  
 15 them. We bid to them.  
 16 **Q. So they had the bid with A. O. Smith, and they**  
 17 **would have contacted you for the material that**  
 18 **they needed; is that how it would work?**  
 19 A. For installing.  
 20 **Q. For installing? And that would be true for the**  
 21 **contractor references throughout Exhibits 1**  
 22 **through 4 and summarized in Exhibit No. 5; is**  
 23 **that correct?**  
 24 A. That's correct.  
 25 **Q. Is A. O. Smith still a customer of L & S?**

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- 1 A. I don't think A. O. Smith is in Milwaukee.  
 2 **Q. Is Tower Automotive still a customer for L & S?**  
 3 A. What?  
 4 **Q. Is Tower Automotive a customer of L & S?**  
 5 A. We might have done some work there for --  
 6 through contractors.  
 7 **Q. Do you know when the last time was you were**  
 8 **there?**  
 9 A. No.  
 10 MR. SENTENEY: I don't have anything  
 11 else.  
 12 MR. RHOADES: I have nothing.  
 13 MR. JARDINE: I have a couple of  
 14 questions. My name is Mike Jardine, and I've  
 15 got a couple questions for you.  
 16 EXAMINATION  
 17 BY MR. JARDINE:  
 18 **Q. If I understand this correctly from your earlier**  
 19 **testimony, L & S generally worked at schools and**  
 20 **churches and hospitals; or is it my**  
 21 **understanding that it is correct they didn't**  
 22 **work at huge places, large places?**  
 23 A. It's true.  
 24 **Q. Mostly schools, churches and hospitals?**  
 25 A. Some industrial accounts, but all small batch

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- 1 jobs, fill-in things. That's what most of these  
 2 are at A. O. Smith, they are small quantities of  
 3 things, repair jobs I think you would say.  
 4 **Q. Okay. And then also you testified earlier that**  
 5 **by 1953 or 1954, L & S used primarily**  
 6 **fiberglass; is that correct?**  
 7 A. We swung toward glass heavily.  
 8 **Q. And you remember that date being around '53 or**  
 9 **'54?**  
 10 A. Somewhere in there.  
 11 **Q. In general, what -- When L & S was called out to**  
 12 **do a job, what percentage would involve high**  
 13 **temperature lines, would you estimate?**  
 14 A. Well, other than an industrial account, very --  
 15 none.  
 16 **Q. Of L & S's overall work, though, how much would**  
 17 **involve high temperature lines?**  
 18 A. Oh, 5 percent.  
 19 **Q. Now L & S, I think I understand correctly,**  
 20 **bought its products from outside sources; right?**  
 21 A. Other than Building Service, yes.  
 22 **Q. In other words, you used more than one supplier;**  
 23 **right?**  
 24 A. Yes.  
 25 **Q. Now, when you bought materials from one of these**

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- 1 various outfits, would you generally ask for a  
2 type of product, or would you ask for a specific  
3 brand name?  
4 A. Well, generically, it was cal-sil; and the trade  
5 names, I don't recall all of them. I'm familiar  
6 with Kaylo, because it was from Owens-Corning,  
7 and it was -- asbestos had a name. Triple A had  
8 a name for it, but I can't tell you all those.  
9 **Q. When L & S would work on a job, was there a way**  
10 **to generalize, would they ask for a type of**  
11 **material as opposed to a brand name; or would**  
12 **they say, "Give me this amount of this brand"?**  
13 A. They would specify a type of material and allow  
14 a -- and name one or two brands or equal. That  
15 was always the case.  
16 **Q. So if on a particular job you would ask for a**  
17 **type, what was supplied to you could be from a**  
18 **number of different manufacturers?**  
19 A. We might have purchased it from any source, that  
20 type of material.  
21 **Q. From job to job, it could be any material?**  
22 A. Yes. We didn't stock too much of that material;  
23 it was too costly.  
24 **Q. Do you have records to identify which of the**  
25 **manufacturers' products went to which particular**

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- 1 A. No, I can't.  
2 **Q. At any rate, as you testified, you wouldn't know**  
3 **where it went?**  
4 A. No.  
5 **Q. No, that's not true; or no, you wouldn't know?**  
6 A. No, I wouldn't know.  
7 **Q. I asked a poor question. Now, in the limited**  
8 **amount of high temperature work, I think you**  
9 **made it clear that you used a number of**  
10 **different brands. Did you use Johns-Manville**  
11 **insulation?**  
12 A. Yes, we did.  
13 **Q. Did you use Pabco insulation?**  
14 A. I think I remember some of that. That might  
15 have been purchased.  
16 **Q. And you also mentioned some material from Atlas,**  
17 **or is Atlas the brand?**  
18 A. No, Atlas Asbestos.  
19 **Q. Any others?**  
20 A. A Canadian firm. I think Johnson Insulation  
21 from Madison might have gotten into the pipe  
22 covering portion of that, too, at some time.  
23 **Q. Now, can you tell me the degree to which**  
24 **L & S used any one of those in particular?**  
25 A. To the degree?

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- 1 job site?  
2 A. That's impossible.  
3 **Q. Do you, yourself, know, have any idea which**  
4 **manufacturers of asbestos products would be at a**  
5 **specific job site?**  
6 A. I've gone through this entire list, and I  
7 couldn't in all honesty tell you -- Only from  
8 the standpoint of knowing what we were doing,  
9 what products in high temperature type, the  
10 cal-sil type material came from. For any job on  
11 that list, no one could tell you.  
12 **Q. It's impossible to know?**  
13 A. It's impossible.  
14 **Q. Now, Mr. Senteney asked you before, you were**  
15 **asked if you knew that L & S used Kaylo before**  
16 **1958, and you said "I would imagine." Do you**  
17 **know that for sure?**  
18 A. I'm supposing that they did. We purchased from  
19 Building Service, and I think they had it  
20 available to them, so I assume in the small  
21 quantities that we bought, we probably got some  
22 from them.  
23 **Q. But can you testify for sure when L & S used a**  
24 **product called Kaylo for the first time; do you**  
25 **know?**

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- 1 **Q. Can you tell me to what degree L & S used any**  
2 **one of those in particular?**  
3 A. Well, it would rely on the -- I would have to  
4 say, if the specifications demanded that it be  
5 used entirely on that job, not singling out  
6 A. O. Smith or -- but if the government or the  
7 school system or A. O. Smith, that's what they  
8 wanted, that's what you would have to install.  
9 If the opportunity was presented and we could  
10 switch to fiberglass, we did that from a cost  
11 factor.  
12 **Q. I think what I'm getting at, do you know how**  
13 **much Johns-Manville insulation you used as**  
14 **compared to Pabco?**  
15 MR. TERSCHAN: You mean as a  
16 percentage?  
17 MR. JARDINE: Yes.  
18 THE WITNESS: In general, we used so  
19 little overall, it's impossible to factor that  
20 in.  
21 MR. JARDINE:  
22 **Q. Okay. And with regard to L & S jobs, you had**  
23 **mentioned earlier that you associate the Kaylo**  
24 **that was used with being manufactured by**  
25 **Owens-Corning; is that correct?**

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1 A. That was my assumption.  
2 MR. JARDINE: That's all I have.  
3 MS. SCHAEFER: I have no questions.  
4 MR. SENTENEY: Just a little bit.  
5 MR. TERSCHAN: Oh.  
6 EXAMINATION  
7 BY MR. SENTENEY:  
8 **Q. Mr. Borchardt, again I refer you to your**  
9 **testimony in the Neubauer, N-e-u-b-a-u-e-r,**  
10 **case.**  
11 A. Yes, I'm aware of Neubauer.  
12 **Q. The deposition was given on July 14, 1980, sir.**  
13 A. Okay.  
14 **Q. I refer you to Page 58. The top of the page.**  
15 **Question: "Mr. Borchardt, you testified that**  
16 **you did use the brand product called Kaylo as**  
17 **opposed to the general cal-sil product that your**  
18 **ticket showed as Kaylo?"**  
19 **Answer: "Yes."**  
20 **Did I read that correctly?**  
21 A. If that's what I said.  
22 **Q. Is that true today? Is that accurate?**  
23 A. Well, I think further along, if you go to one of  
24 these depositions, you will see I will -- I  
25 stated under oath that if our ticket said Kaylo

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1 Is that correct, sir?  
2 A. That's correct.  
3 **Q. Now then, on the next page, Page 59:**  
4 **Question: "Did you, yourself, actually**  
5 **see the Kaylo product? All my questions are the**  
6 **specific brand Kaylo."**  
7 **Answer: "Yes."**  
8 **Question: "Did you, yourself, see it?"**  
9 **Answer: "Yes."**  
10 **Did I read those correctly, sir?**  
11 A. Yes.  
12 MR. SENTENEY: Just off the record.  
13 (Discussion off the record.)  
14 MR. SENTENEY: For the record, we're  
15 going to mark the actual ledger books 1-A, 2-A,  
16 3-A and 4-A, which will be kept in the  
17 possession of L & S's counsel; and I'm done.  
18 (Deposition Exhibit Nos. 1-A, 2-A, 3-A,  
19 and 4-A were marked for identification by the  
20 Court Reporter.)  
21 (Whereupon, the above proceedings  
22 concluded at 10:50 o'clock in the forenoon.)  
23  
24  
25

\* \* \* \*

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1 written on it, that doesn't necessarily mean it  
2 came from Owens-Corning.  
3 **Q. Did I read that quote correctly?**  
4 A. Yes, you did.  
5 **Q. And it goes on to state: "Can you tell me the**  
6 **earliest date that you recall L & S using that**  
7 **brand product?"**  
8 **Answer: "I'm sorry, I can't; but I**  
9 **would think, you know, if it was manufactured,**  
10 **it would have been just a reasonable time after**  
11 **that that we probably purchased them."**  
12 **Question: "Are you talking about in**  
13 **the '50s or the '60s, as far back as that?"**  
14 **Answer: "If it was manufactured in the**  
15 **'50s, I'm sure that we purchased some in the**  
16 **'50s." Unquote.**  
17 **Did I read that accurately?**  
18 A. Yes, you did, for Building Service, Industrial,  
19 yes.  
20 **Q. And it goes on to say, question, on the same**  
21 **page: "Did you use that product for specific**  
22 **types of jobs, or did you use it generally in**  
23 **insulation?"**  
24 **Answer: "Only for high temperature**  
25 **insulation." End of quote.**

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1 STATE OF WISCONSIN )  
2 ) SS:  
3 WAUKESHA COUNTY )  
4 I, MELODY D. WEST, a Notary Public in and  
5 for the State of Wisconsin, do hereby certify that  
6 ELMER H. BORCHARDT, the witness named herein, personally  
7 appeared before myself on the 12th day of May, 2003,  
8 commencing at 10:00 o'clock in the forenoon at the Law  
9 Offices of Terschan, Steinle & Ness, 2600 North Mayfair  
10 Road, Suite 700, Milwaukee, Milwaukee County, Wisconsin,  
11 and was by me duly sworn to testify the truth and nothing  
12 but the truth in the within-entitled cause.  
13 That said deposition was reported by myself  
14 as an independent court reporter and disinterested person  
15 and was thereafter transcribed into typewritten form under  
16 my direction.  
17 I further certify that I am not of counsel  
18 nor attorney for either or any of the parties to said  
19 deposition, nor in any way interested in the outcome of the  
20 cause named in the caption.  
21 I further certify that the appearances to  
22 this deposition are as noted in the index of this  
23 transcript as set forth on Page 2.  
24  
25

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1 I have hereunto set my hand and affixed my  
2 seal of office this 12th day of May, 2003.

3  
4  
5  
6  
7 MELODY D. WEST - NOTARY PUBLIC  
8 IN AND FOR THE STATE OF WISCONSIN  
9  
10

11 My commission expires: November 2, 2003.  
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